IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Criminal Revision No.729 of 2001

Decided on : March 09, 2009

Harnek Singh

... Petitioner

VERSUS

The State of Punjab and others

... Respondents

CORAM :
HON'BLE MR.JUSTICE A.N.JINDAL

Present: Mr.Vikas Bahl,
Advocate for the petitioner.

Mr.O.P.Dabla, Assistant Advocate General
Punjab.

A.N.JINDAL, J.-

The petitioner – complainant Harnek Singh (herein referred as `complainant') has assailed the judgment dated 17.11.2000 passed by Additional Sessions Judge, Nawanshahar, acquitting respondents – accused (herein referred as `accused') of the charge under Section 302/34 of the Indian Penal Code.

A brief resume of the facts is that on 2.7.1998, the complainant in his application (Ex.PF) to the Police disclosed that his father had contracted two marriages and that he and Baldev Singh, aged 26/27 years, were born out of them. Baldev Singh was a truck driver and

was unmarried. He had illicit relations with Balbir Kaur alias Biro d/o Gej r/o Mahalon. Amar Chand alias Ludan – respondent is the son of Biro's mother's brother, whereas accused Dilbagh is her husband and they both used to pursue Baldev Singh to severe his relations with Biro, but he did not stop. On 27.6.1998 at about 4/5 p.m., Baldev Singh made a telephonic call to the complainant and told that he has been beaten and administered poison by accused Amar Chand, Dilbagh and five more persons. Thereafter, he could not speak. Despite efforts, the complainant could not find his brother Baldev Singh. On 28.6.1998, dead body of Baldev Singh was recovered on the gate of sugar-mill, Nawanshahar situated at railway level crossing road. On the aforesaid complaint, a case was registered and the case was investigated into.

On completion of the investigation, report under Section 173 of the Code of Criminal Procedure was submitted before the Ilaqa Magistrate.

On commitment, the Trial Court charged all the three accused under Section 302/34 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

The prosecution in order to substantiate the charge, examined Dr.Naresh Mittal (PW1), Harnek Singh – complainant (PW2), Mohan Singh (PW3), Baldev Singh draftsman (PW4), Malook Singh (PW5), Sub-Inspector Parveen Kanda (PW6), Constable Jatinder Singh (PW7), ASI Pawittar Singh (PW8) and Sub-Inspector Jaswinder Singh (PW9).

In their statements under Section 313 of the Code of Criminal Procedure, the accused denied all the incriminating circumstances appearing against them and pleaded their false implication. However, they led no evidence in defence.

Arguments heard. Record perused.

The occurrence is stated to have taken place on 27.6.1998. The names of the respondents were known to the complainant and the witnesses on the same day. However, the First Information Report version having been recorded on 2.7.1998 i.e, after four days, does not contain any plausible explanation. The witnesses had no difficulty to approach the complainant. Though, brother of the deceased (complainant) stated that he was informed by the deceased that the accused had administered him poison through alcohol, yet as per report of the Chemical Examiner, no poison was detected in the organs, sent for chemical analysis. There is no eye-witness. The extra-judicial confession is a very week type of evidence and no reliance could be placed on such testimony, unless, it finds corroboration from other evidence. Resultantly, it could be inferred that the prosecution has not come with the true version and has suppressed the genesis of occurrence, and that the defence version is believable.

The law is well-settled that while hearing a revision/appeal against an order of acquittal, interference would be called for only when the judgment is palpably perverse and is based on a misreading of the

evidence. However, it is equally settled that where two views are possible, then the one taken by the Trial Court should not be disturbed.

As a result of the above discussion, the revision petition fails and the same is hereby dismissed.

March 09, 2009 (A.N.JINDAL)
`gian' JUDGE